

0-1511-1

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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**MAR 23 2004**

In the Matter of )

Qwest Corporation )

Petition for Waiver of Section 54.313 of the  
Commission's Rules )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 96-45

**PETITION FOR WAIVER OF QWEST CORPORATION**

Pursuant to section 1.3 of the Federal Communications Commission's ("Commission") rules,<sup>1</sup> Qwest Corporation ("Qwest") hereby requests a waiver of section 54.313 of the Commission's rules, so that Qwest can obtain federal high-cost universal service support for its service area in Nebraska for the first and second quarters of 2004. Qwest's waiver request is fully supported by the Nebraska Public Service Commission ("Nebraska PSC").<sup>2</sup> As discussed below, this waiver is warranted, given the fact that Qwest became eligible for federal high-cost support in Nebraska after the October 1, 2003 deadline for filing the annual certification for 2004.

I. **BACKGROUND**

Under the Commission's rules, state commissions must file by October 1 an annual certification that a non-rural incumbent local exchange carrier ("non-rural carrier") will use all federal high-cost support provided to that carrier for the provision, maintenance, and upgrading

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<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> See *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish guidelines for the purpose of certifying the use of federal universal service support,*

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of facilities and services for which the support is intended. Such certification is necessary in order for that carrier to receive high-cost support for that state in the following calendar year.<sup>3</sup>

On December 24, 2003, the Commission issued a Public Notice providing a state-by-state estimate of non-rural high-cost support amounts for 2004.<sup>4</sup> An attached chart showed that eligible telecommunications carriers (“ETCs”) in non-rural carriers’ service areas in Nebraska would be eligible to receive approximately \$8 million in high-cost model support for 2004.<sup>5</sup> Prior to 2004, ETCs in those areas had not received any support under the Commission’s current high-cost methodology.

On March 16, 2004, the Nebraska PSC adopted an order finding that Qwest had properly demonstrated that it will use federal high-cost support only for the provision, maintenance, and upgrading of facilities and/or service for which the support is intended in accordance with section 254(e) of the Communications Act of 1934, as amended.<sup>6</sup> The Nebraska PSC accordingly stated that it would provide requisite certification to the Administrator and the Commission so that Qwest could receive high-cost universal service support for Nebraska. In addition, the Nebraska PSC expressed support for the waiver request that it anticipated Qwest would be filing to obtain high-cost support for the first two quarters of this year, finding that grant of the request would be in the public interest and would be necessary to ensure that Qwest

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Application No. NUSF-25, Progression Order # 11 (Neb. Pub. Serv. Comm’n Mar. 16, 2004) (“*Nebraska Order*”), attached hereto.

<sup>3</sup> 47 C.F.R. § 54.313(d)(3).

<sup>4</sup> Wireline Competition Bureau Releases Estimated State-By-State High-Cost Universal Service Support Amounts For Non-Rural Carriers For 2004, CC Docket No. 96-45, Public Notice, 18 FCC Rcd 26657 (Dec. 24, 2003) (“Public Notice”).

<sup>5</sup> *Id.* at 26659 (Attachment).

<sup>6</sup> *Nebraska Order* ¶¶ 4-5.

would receive the high-cost support needed to maintain affordable and reasonably comparable telecommunications service in high-cost areas of Nebraska.<sup>7</sup>

## II. DISCUSSION

Under section 1.3 of its rules, the Commission may waive application of its rules for good cause shown.<sup>8</sup> In this case, there clearly is ample justification for a waiver given the unique circumstances presented. At the time of the October 1 deadline, there was no reason for the Nebraska PSC to file an annual certification for Qwest. Qwest was not receiving high-cost support in Nebraska and there was no indication that it would be eligible for such support in 2004.

Moreover, failure to grant the waiver would mean that Qwest would not be eligible for high-cost support in Nebraska for the first and second quarters of this year, contrary to the Nebraska PSC's determination that such support is needed in Nebraska to ensure sufficient support consistent with section 254. Thus, the requested waiver is fully consistent with the public interest. The request is also consistent with previous waivers granted by the Commission.<sup>9</sup> As a result, the Commission should grant the requested waiver so that Qwest will be eligible to receive high-cost support in Nebraska for the first and second quarters of 2004.

## III. CONCLUSION

For the foregoing reasons, the Commission should grant the requested waiver of section 54.313 of the Commission's rules to treat the Nebraska PSC's certification as timely filed for

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<sup>7</sup> *Id.* ¶ 6.

<sup>8</sup> 47 C.F.R. § 1.3.

<sup>9</sup> *See, e.g., In the Matter of Federal-State Joint Board on Universal Service, West Virginia Public Service Commission; Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Non-Rural Carriers*, 16 FCC Rcd 5784 (2001).

purposes of Qwest being eligible to receive high-cost support in its service area in Nebraska for the first and second quarters of 2004.

Respectfully submitted,

QWEST CORPORATION

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Its Attorneys

March 23, 2004

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska                    ) APPLICATION NO. NUSF-25  
Public Service Commission, on                    )  
its own motion, seeking to                    )  
establish guidelines for the                    ) Progression Order # 11  
purpose of certifying the use of                )  
federal universal service                        )  
support.    ) Entered: March 16, 2004

BY THE COMMISSION:

1. The Commission has established self-certification as its process for verifying whether all federal high-cost support will be used for its intended purpose, pursuant to 47 C.F.R § 54.313 and CC Docket No. 96-45. See Application No. NUSF-25, Progression Order #1 (August 21, 2001).

2. On February 26, 2004, Qwest Corporation (Qwest) caused to be filed an affidavit of John Richardson, Senior Vice President and Controller for Qwest. Mr. Richardson's affidavit, dated February 25, 2004, certifies that Qwest will use any funds received from the Federal Universal Service High Cost Support Fund for purposes consistent with Section 254(e) of the Telecommunications Act of 1996 (the Act) as amended.

3. On March 11, 2004, ALLTEL Nebraska Inc. (ALLTEL) caused to be filed an affidavit of Steve R. Mowery, Vice President of State Government Affairs for ALLTEL. Mr. Mowery's affidavit dated March 10, 2004, certifies that ALLTEL will use any funds received from the Federal Universal Service High Cost Support Fund for purposes consistent with Section 254(e) of the Act as amended.

O P I N I O N     A N D     F I N D I N G S

4. The Commission finds that Qwest and ALLTEL filed properly completed affidavits.

5. Accordingly, the Commission will provide certification to the Administrator of the federal high-cost universal service support mechanisms and the Federal Communications Commission that Qwest and ALLTEL will use federal high-cost support only for the provision, maintenance, and upgrading of facilities and/or service for which the support is intended in accordance with section 254(e) of the Act, as amended.

6. The Commission is aware that both Qwest and ALLTEL will be seeking waivers from the Federal Communications Commission of the state certification requirements in order to receive federal high-cost universal service support for the first quarter of calendar year 2004. According to rule 54.313(d)(3)(i) in order for a carrier to receive first, second, third and fourth quarter high-cost support for the succeeding year, the Commission must file its certification to the FCC by October 1st. The FCC's Order and Order on Reconsideration<sup>1</sup> was issued subsequent to the October 1, 2003 deadline. As of October 1, 2003, Qwest and ALLTEL were not eligible to receive high-cost support and accordingly did not file the required affidavit with the Commission at that time. The Commission believes that the granting of such waivers would be in the public interest and are necessary to ensure that Qwest and ALLTEL receive the high-cost support needed to maintain affordable and comparable telecommunications services in high-cost areas. The Commission therefore supports their waiver requests.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the affidavits filed by the above-named carriers are accepted.

MADE AND ENTERED at Lincoln, Nebraska this 16th day of March 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

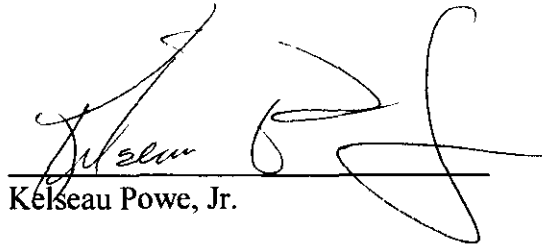
Executive Director

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<sup>1</sup> See *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order and Order on Reconsideration, DA 03-4070 (rel. December 24, 2003).

## CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that I have caused the foregoing **PETITION FOR WAIVER OF QWEST CORPORATION** to be 1) filed with the FCC, 2) served, via email, on Mr. Eric Einhorn of the Wireline Competition Bureau's Telecommunications Access Policy Division at [eric.einhorn@fcc.gov](mailto:eric.einhorn@fcc.gov) and Ms. Sharon Webber of the Wireline Competition Bureau's Telecommunications Access Policy Division at [sharon.webber@fcc.gov](mailto:sharon.webber@fcc.gov), and 3) served via First Class United States mail, postage prepaid, on the Nebraska Public Service Commission, Suite 300, 1200 North Street, Lincoln, NE 68508.



Kelseau Powe, Jr.

March 23, 2004